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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 STATE OF CALIFORNIA
13 DEPARTMENT OF TOXIC
14 SUBSTANCES CONTROL,

15 v.

Plaintiff,

16 AEROJET-GENERAL CORPORATION;
17 ALLIED-SIGNAL, INCORPORATED;
18 ALTERNATIVE MATERIALS
19 TECHNOLOGY, INCORPORATED (for
20 U.S. CELLULOSE); ASHLAND
21 CHEMICAL, INCORPORATED;
22 CHEMCENTRAL CORPORATION;
23 CHEVRON U.S.A., INCORPORATED;
24 COURTAULDS COATINGS,
25 INCORPORATED (for
26 INTERNATIONAL PAINT COMPANY);
27 DELTA AIR LINES, INCORPORATED;
28 DORSETT & JACKSON,
INCORPORATED; THE DOW
CHEMICAL COMPANY; E.I. DuPONT
de NEMOURS & CO., INCORPORATED;
EUREKA CHEMICAL COMPANY;
EUREKA FLUID WORKS; FORD
MOTOR COMPANY; GENERAL

Case No.: C 00 4796 PJH

**NOTICE OF MOTION AND
MOTION OF NON-FEDERAL
DEFENDANTS FOR JUDICIAL
APPROVAL OF SETTLEMENT
AGREEMENT AND CONSENT
DECREE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: July 11, 2001

Time: 9:00 a.m.

HONORABLE PHYLLIS J. HAMILTON

**NOTICE OF MOTION AND MOTION OF NON-
FEDERAL DEFENDANTS**

CASE NO. : C 00 4796 PJH

1 MOTORS CORPORATION; GREAT
2 WESTERN CHEMICAL COMPANY;
3 HEWLETT-PACKARD COMPANY;
4 INTER-STATE OIL COMPANY;
5 INGERSOLL-RAND COMPANY (for
6 SCHLAGE LOCK COMPANY); INTEL
7 CORPORATION; INTERNATIONAL
8 PAPER COMPANY (for STECHER-
9 TRAUNG-SCHMIDT); KAISER
10 ALUMINUM & CHEMICAL
11 CORPORATION; LITTON ELECTRON
12 DEVICES (a division of LITTON
13 SYSTEMS, INCORPORATED);
14 LOCKHEED MARTIN CORPORATION
15 (successor to LOCKHEED MISSILES &
16 SPACE COMPANY, INCORPORATED);
17 MAXUS ENERGY CORPORATION (for
18 OCCIDENTAL CHEMICAL
19 CORPORATION, successor to DIAMOND
20 SHAMROCK CHEMICALS COMPANY,
21 f.k.a. DIAMOND SHAMROCK
22 CORPORATION); McKESSON HBOC,
23 INCORPORATED; MONSANTO
24 COMPANY; NI INDUSTRIES,
25 INCORPORATED; NL INDUSTRIES,
26 INCORPORATED; THE O'BRIEN
27 CORPORATION (for FULLER-O'BRIEN
28 PAINTS); OLYMPIAN OIL COMPANY;
OWENS-ILLINOIS, INCORPORATED;
PACIFIC GAS & ELECTRIC
COMPANY; PENNZOIL-QUAKER
STATE COMPANY; PUREGRO
COMPANY; RAYCHEM
CORPORATION; REDDING
PETROLEUM, INCORPORATED;
REDWOOD OIL COMPANY;
REICHOLD CHEMICALS,
INCORPORATED; REYNOLDS
METALS COMPANY; R.J.
McGLENNON COMPANY,
INCORPORATED; ROCHESTER
MIDLAND CORPORATION (for
BYTECH CHEMICAL CORPORATION);
ROHM & HAAS COMPANY; ROMIC

NOTICE OF MOTION AND MOTION OF NON-
FEDERAL DEFENDANTS

1 ENVIRONMENTAL TECHNOLOGIES
2 CORPORATION (successor to ROMIC
3 CHEMICAL CORPORATION); SANDOZ
4 AGRO, INCORPORATED (for ZOECON
5 CORPORATION); SAN FRANCISCO
6 BAY AREA RAPID TRANSIT
7 DISTRICT; SEQUA CORPORATION (for
8 GENERAL PRINTING INK, a division of
9 SUN CHEMICAL); SHELL OIL
10 COMPANY; SIMPSON COATINGS
11 GROUP, INCORPORATED; STANFORD
12 UNIVERSITY; THE STERO COMPANY;
13 SYNERGY PRODUCTION GROUP,
14 INCORPORATED (d.b.a. HALEY
15 JANITORIAL SUPPLY CO.,
16 INCORPORATED and WESTERN
17 CHEMICAL COMPANY); SYNTEX
18 (U.S.A.), INCORPORATED; TAP
19 PLASTICS, INCORPORATED;
20 TELEDYNE RYAN AERONAUTICAL,
21 McCORMICK SELPH ORDNANCE
22 UNIT (for TELEDYNE McCORMICK
23 SELPH); TEXTRON, INCORPORATED;
24 UNION OIL COMPANY OF
25 CALIFORNIA; UNITED AIR LINES,
26 INCORPORATED; UNITED STATES
27 DEFENSE REUTILIZATION
28 MARKETING SERVICE; UNITED
TECHNOLOGIES CORPORATION;
UNIVERSITY OF CALIFORNIA; VAN
WATERS & ROGERS INCORPORATED;
VOPAK DISTRIBUTION AMERICAS
CORPORATION (f.k.a. UNIVAR
CORPORATION); W.R. GRACE &
COMPANY; and W.R. MEADOWS,
INCORPORATED,

Defendants.

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 11, 2001, at 9:00 a.m., or as soon thereafter as this matter can be heard, in the courtroom of the Honorable Phyllis J. Hamilton, in the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 15th Floor, San Francisco, California, non-federal defendants Aerojet-General Corporation *et al.* (the "non-federal defendants", *i.e.*, all defendants other than United States Defense Reutilization Marketing Service, which is referred to herein as the "federal defendant") will move the Court to approve and enter as a consent decree of the Court, pursuant to 42 U.S.C. § 9613(f), the Settlement Agreement and Consent Decree (the "Consent Decree") entered into by and among the State of California Department of Toxic Substances Control ("DTSC"), the non-federal defendants and the federal defendant (collectively "defendants"), concerning alleged liability for response costs and cleanup of the Bay Area Drum State Superfund site in San Francisco, California. The Consent Decree will be lodged with the Court concurrently with the filing of this motion.

This motion will be based on this Notice of Motion and the following Memorandum of Points and Authorities, the Consent Decree lodged herewith, the Declaration of Joseph J. Armao filed herewith, any argument and evidence presented at the hearing on this motion, and such other matters as the Court may deem appropriate.

MEMORANDUM OF POINTS AND AUTHORITIES

I. **STATEMENT OF ISSUES**

Whether the Consent Decree is reasonable, fair, and consistent with the purposes that the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, is intended to serve, and thus should be approved and entered as a consent decree of the Court.

II. **SUMMARY OF ARGUMENT**

Non-federal defendants seek the Court's approval and entry of the Consent

1 Decree under § 113(f) of CERCLA, 42 U.S.C. § 9613(f). The Consent Decree resolves
2 DTSC's claims against defendants for recovery of the costs that DTSC has incurred, and will
3 incur in the future, in response to the release and threatened release of hazardous substances at
4 and from a former drum reconditioning facility located at 1212 Thomas Avenue, San
5 Francisco, California (the "Property"). (The total area to which hazardous substances have
6 been released or threatened to be released at and from the Property is referred to in this
7 memorandum as the "Site.") The Consent Decree also resolves DTSC's claims against
8 defendants for performance of environmental removal and remedial activities in response to
9 the release and threatened release of hazardous substances at the Site.

10 For the reasons set forth below, the Consent Decree is reasonable, fair and
11 consistent with the purposes that CERCLA is intended to serve, and should be approved and
12 entered as a consent decree of the Court.

13 **III. STATEMENT OF FACTS**

14 **A. Background of the Site.**

15 The Property was operated as a drum reconditioning facility for 40 years--from
16 approximately 1948 until 1987. Facility operations included receiving, cleaning,
17 reconditioning, repainting and selling used metal drums. In 1987, DTSC initiated an expedited
18 response action at the Site after issuing an Imminent and Substantial Endangerment
19 Determination for the facility. The facility has remained essentially unused since 1987, with
20 the exception for temporary storage of construction materials, industrial equipment and
21 vehicles.

22 **B. DTSC's Investigation of the Site.**

23 In 1982, DTSC learned that hazardous substances had been released at the Site.
24 DTSC thereafter investigated the history of the Site and, in particular, the industrial and
25 commercial activities that have taken place at the Property since World War II. DTSC
26 examined public records and the written records of several persons or entities which operated
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1 drum reconditioning businesses on the Property. DTSC has interviewed nine former
2 employees of those businesses and has sent information request letters to more than 70 persons
3 and entities who or which sent drums to the Property for reconditioning.

4 To date, the Group has estimated that the cost of implementing both the
5 Feasibility Study and Remedial Action Plan ("FS/RAP") and the Removal Action Work Plan
6 ("RAW") will exceed \$3.3 million. See Declaration of Joseph J. Armao ("Armao Decl."), ¶
7 12. To date, DTSC alleges that it has incurred costs in excess of \$5.1 million conducting and
8 supervising activities in response to the release and threatened release of hazardous substances
9 at the site, and has secured reimbursement of more than \$1 million of this sum through *de*
10 *minimis* settlement agreements, distributions from the estates in bankruptcy of several Site
11 potential responsible parties ("PRPs"), and from payments made by the Group. See Armao
12 Decl., ¶ 13. The Group has also paid DTSC \$310,000 pursuant to a Consent Order. *Id.*

13
14 C. Consent Decree Settlement Negotiations.

15 In late 1999, the Group and DTSC began settlement negotiations that led to the
16 Settlement Agreement and Consent Decree ("Consent Decree"). See Armao Decl., ¶ 11. The
17 Consent Decree was the result of lengthy negotiations and numerous meetings between DTSC
18 and the defendants. *Id.* The issues negotiated included the scope of the cleanup and the
19 amount to be paid to settle DTSC's claim for its past response costs. *Id.* After roughly one
20 year of vigorous and occasionally contentious negotiations, the Group and DTSC reached a
21 settlement in principle in the fall of 2000. *Id.* Final agreement on the terms and language of
22 the Consent Decree was reached in February 2001. *Id.* Additional time was needed to
23 negotiate participation of the federal defendant (United States Defense Reutilization and
24 Marketing Service) and to obtain the signatures of the sixty-five parties participating in the
25 Consent Decree. *Id.*

26 D. Consent Decree Provisions.

27 The Consent Decree is intended to fully resolve any liability on the part of
28 defendants to reimburse DTSC the costs it has incurred, and will incur in the future,

1 conducting and supervising removal and remedial activities in response to the release and
2 threatened release of hazardous substances at the Site, and any obligation defendants might
3 have to DTSC to perform removal and remedial activities in response to that release or
4 threatened release. See Consent Decree at ¶¶ 10.1-.3. The Consent Decree also is intended to
5 provide defendants with protection against third party claims for contribution under 42 U.S.C.
6 § 9613(f)(2). *Id.* at ¶ 10.4. In return for this resolution of liability, defendants will pay DTSC
7 the total sum of \$ 1,725,000. *Id.* at ¶ 5.1.

8 The Consent Decree contains "reopener" provisions, allowing DTSC to recover
9 from defendants costs incurred responding to certain specified conditions, discovered at the
10 Site after the entry of the Consent Decree, or as the result of receiving certain specified types
11 of information not available to DTSC at the time of entry of the Consent Decree. *Id.* at ¶ 7.2.
12 The Consent Decree also contains complex provisions specifying the parties to whom the
13 benefit of the Consent Decree inures. Generally speaking, these provisions are designed to
14 eliminate any liability that defendants might have to DTSC as alleged successors to any other
15 past owner or operator of the Site, while preserving DTSC's potential claims against any
16 former owner or operator of the Site other than defendants. *Id.* at ¶ 10.5.

17
18 E. Notice of the Consent Decree.

19 In order to ensure that all interested parties receive proper notice of the Consent
20 Decree, upon the confirmation of a briefing and hearing schedule by the Court, defendants will
21 mail a copy of the Consent Decree, this Motion and Memorandum of Points and Authorities,
22 the Declaration of Joseph J. Armao, the Proposed Order granting this motion, and any Court
23 order establishing a briefing and hearing schedule to: 1) the other PRPs identified by DTSC
24 with respect to the Site; 2) approximately 350 persons or entities who or which reside or
25 conduct business operations on, or own, real property adjacent to or in the vicinity of the
26 Property, and addresses adjacent to or in the vicinity of the Property; and 3) the roughly 50
27 other persons and entities on DTSC's mailing list (other than elected officials and news media)
28 who or which have requested notice from DTSC regarding activities at the Site, or who or

1 which automatically receive such notice. Armao Decl., ¶ 18.¹ Counsel for DTSC will file an
2 appropriate proof of service after conducting this mailing. *Id.* Defendants also will publish
3 the notice weekly for four (4) weeks preceding the hearing on the Motion in all major local
4 newspapers and legal journals, including the San Francisco Chronicle, the San Francisco
5 Examiner, the Independent, the San Francisco Daily Journal and The Recorder.

6 IV. ARGUMENT

7 This Court should approve the Consent Decree as fair, reasonable, and consistent
8 with the purposes that CERCLA is intended to serve.

9 When reviewing a proposed consent decree under 42 U.S.C. § 9613(f),² the
10 Court's "function is circumscribed: It must ponder the proposal only to the extent needed to
11 'satisfy itself that the settlement is reasonable, fair, and consistent with the purposes that
12 CERCLA is intended to serve.'" *United States v. DiBiase*, 45 F.3d 541, 543 (1st Cir. 1995)
13 (quoting *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 85 (1st Cir. 1990)); accord
14 *United States v. Montrose Chem. Corp.*, 50 F.3d 741, 743, 746 (9th Cir. 1995).

15 The Court's review should be guided by CERCLA's express policy of
16 encouraging settlements. *Montrose Chem.*, 50 F.3d at 746. Moreover, decrees negotiated by a
17 public agency charged with furthering the public interest enjoy "a presumption of validity";
18 "[i]t is not the Court's place to determine whether the decree represents an optimal settlement
19 in the Court's view." *United States v. Bay Area Battery*, 895 F. Supp. 1524, 1528 (N.D. Fla.
20 1995) (approving CERCLA consent decree settlement) (citations omitted). See also *Montrose*

21
22
23 ¹ Service by mail of the proposed Consent Decree and moving papers constitutes actual
24 notice. *Tulsa Professional Collection Serves, Inc. v. Pope*, 485 U.S. 478, 490 (1988).
25 Defendants will serve, by mail, all known claimants and potential claimants that are
"reasonably ascertainable," in accordance with *Mennonite Bd. of Missions v. Adams*, 462 U.S.
791, 800-01 (1983).

26 ² The Consent Decree has been entered into pursuant to 42 U.S.C. § 9613(f), and not 42
27 U.S.C. § 9622. 42 U.S.C. § 9622 applies only to settlements entered into between the United
28 States and PRPs. *State of Arizona v. Components, Inc.*, 66 F.3d 213, 216 (9th Cir. 1995).

1 Chem., 50 F.3d at 746 ("CERCLA's policy of encouraging early settlements is strengthened
2 when a government agency charged with protecting the public interest 'has pulled the laboring
3 oar in constructing the proposed settlement.'" (quoting *Cannons*, 899 F.2d at 84)).

4 In applying the standard set forth above, courts consider four criteria: 1)
5 procedural fairness; 2) substantive fairness; 3) reasonableness; and 4) fidelity to CERCLA.
6 See *Cannons*, 899 F.2d at 85-93. The Consent Decree satisfies each of these criteria.

7
8 A. The Consent Decree is Procedurally Fair.

9 On March 14, 1996, after having already performed significant investigative
10 work at the Site, the Group entered into a Consent Order, Docket NO. HAS 95/96-060, with
11 DTSC (the "Consent Order") in which it expressly denied any liability and reserved all
12 defenses and rights but nonetheless agreed to perform certain additional Site investigation
13 tasks that were to culminate in the preparation of a draft remedial action plan. See *Armao*
14 Decl., ¶ 3. Since entering into the Consent Order, the Site investigation work performed by
15 the Group includes the following items: (1) prepared and submitted a Baseline Risk
16 Assessment (May 1996), approved by DTSC in May 1997; (2) prepared and submitted a
17 Groundwater Monitoring Workplan (May 1996), approved by DTSC in August 1996); (3)
18 prepared and submitted a Public Participation Plan, approved by DTSC in March 1997; (4)
19 performed regular rounds of groundwater sampling, laboratory analysis and reporting; (5)
20 surveyed and repaired DTSC's monitoring wells and piezometers in the vicinity of the Site; (6)
21 prepared and submitted an RI/FS Workplan (July 1997); and (7) prepared and submitted a
22 Feasibility Study and Remedial Action Plan ("FS/RAP"). *Id.* at ¶ 5.

23 On May 22, 1998, DTSC requested that the Group submit a draft Removal
24 Action Work Plan ("RAW") for soil in eight residential backyards adjacent to the 1212
25 Thomas Avenue property. DTSC requested the Group to consider this activity based on
26 concerns expressed by the residents whose properties abut the building and capped yard on the
27 north side of the property. This undertaking was largely voluntary, since DTSC acknowledged
28 that conditions in these yards did not rise to the level of an endangerment supporting issuance

1 of an Imminent and Substantial Endangerment order. The Group agreed to do so and
2 performed extensive investigative work in the eight adjoining backyards, including multiple
3 rounds of soil and groundwater sampling and laboratory analysis. On December 22, 1998,
4 after a public hearing at the Bay View Opera House and the submission of comments by area
5 residents and several environmental public interest organizations, the RAW prepared by the
6 Group was approved by DTSC. The final RAW requires limited soil removal in the eight
7 backyards adjacent to the Site, confirmation sampling to ensure achievement of residential
8 cleanup levels, and public participation. *Id.* at 7-8.

9
10 In accordance with the Consent Order, the Group prepared and submitted the
11 Feasibility Study and Remedial Action Plan ("FS/RAP"). Following an extensive public
12 participation process that included a public hearing at the Bay View Opera House and the
13 submission of numerous oral and written comments by area residents, public interest
14 environmental organizations and others, DTSC approved the FS/RAP for the Site on August
15 14, 2000. No writs or other challenges were filed, and the FS/RAP has become final. The
16 final FS/RAP requires the preparation and approval by DTSC of a detailed Remedial Design
17 for the implementation of the approved remedy. In sum, the remedy requires extensive soil
18 removal, groundwater remedial activities consisting of enhanced monitored biodegradation
19 techniques employing the injection of oxygen reducing compounds, confirmation soil and
20 groundwater sampling to ensure the achievement of residential cleanup standards, and follow-
21 up remedial activities in accordance with an approved Operation, Maintenance and Monitoring
22 Agreement. *See* Exhibits D & E to the Consent Decree and Settlement Agreement and Armao
23 Decl., ¶ 9.

24 Since approval of the FS/RAP, the Group has continued to perform extensive
25 work at the Site in order to ensure that the cleanup can be performed this year. The Group has
26 engaged an environmental consultant, Geomatrix Consultants, to implement the cleanup,
27 including both the RAW and the RAP, in accordance with the Consent Decree. Based on
28 information provided by both its consultants and the technical staff of its members, the Group

1 has estimated that the total cost of implementing the cleanup will exceed \$3.3 million. Armao
2 Decl., ¶ 10.

3 In late 1999, the Group and DTSC began the settlement negotiations that led to
4 the Settlement Agreement and Consent Decree (the "Consent Decree"). DTSC negotiated the
5 settlement terms memorialized in the Consent Decree with all defendants at arms-length, over
6 a period of approximately eighteen months. The issues negotiated included the scope of the
7 cleanup and the amount to be paid to settle DTSC's claim for its past response costs. After
8 approximately one year of vigorous and occasionally contentious negotiations, the Group and
9 DTSC reached a settlement in principle in the fall of 2000, shortly after the FS/RAP was
10 approved. Final agreement on the terms and language of the Consent Decree was reached in
11 February 2001. Additional time was needed to negotiate the participation of the federal
12 defendant (United States Defense Reutilization and Marketing Service), and to obtain the
13 signatures of the sixty-five parties participating in the Consent Decree. *Id.* at ¶ 11.

14 In the Consent Decree, the defendants have agreed to implement the cleanup.
15 As noted above, the Group has estimated that the cost of implementing both the FS/RAP and
16 the RAW will exceed \$3.3 million. The Group has incurred costs in excess of \$4.5 million
17 performing work at the Site since 1993. In addition to performing extensive remedial
18 investigative and other work at the Site during the last eight years, the Group paid DTSC
19 \$310,000 pursuant to the Consent Order. The Group also was instrumental in brokering
20 DTSC's settlement with former owner/operator Waymire Drum, which allowed DTSC to
21 recover \$400,000. *Id.* at 12-13. For these reasons, the Consent Decree reached between
22 DTSC and the Group is procedurally fair.

23
24 B. The Consent Decree Is Substantively Fair.

25 The Consent Decree is substantively fair due to the weakness of DTSC's claims
26 against the Group. Further, other PRPs exist from which DTSC can seek recovery of its past
27 costs. These included former owners and operators, which defendants believe share the
28 primary liability for the contamination. *See* Armao Decl., ¶ 14. DTSC itself has identified

1 these former owners and operators as potentially responsible parties. *See id.* Moreover, the
2 Group believes it has a number of valid defenses to DTSC's claim for past costs, including,
3 but not limited to, those based on statutes of limitations and the failure of DTSC to comply
4 with the National Contingency Plan. The Consent Decree is a fair compromise between
5 DTSC and the Group.

6
7 The substantive fairness of the Consent Decree, moreover, is enhanced by the
8 inclusion of several non-payment provisions. First, DTSC may pursue defendants anew, for
9 any costs it incurs as a result of newly-discovered Site conditions, or newly-developed
10 information about the Site, that lead DTSC to conclude that the response activities conducted
11 at and for the Site have been inadequate. And while the Consent Decree resolves defendants'
12 liability as alleged successors to any previous owner or operator of the Property, the Consent
13 Decree takes pains to ensure that no prior owner or operator of the Property is released from
14 its potential liability to DTSC.

15 C. The Consent Decree is Reasonable.

16 The *Cannons* court considered three factors in determining whether the consent
17 decree before it was reasonable: 1) whether the settlement would likely be effective in
18 ensuring a cleanup of the Site; 2) whether the settlement would adequately compensate the
19 public; and 3) whether the settlement reflected the relative strength of the parties' bargaining
20 positions. *Cannons*, 899 F.2d at 89-90. The Consent Decree in this case clearly satisfies all
21 of these criteria.

22 The Consent Decree provides for cleanup of the Site by the Group by
23 implementing the final approved RAW and FS/RAP. The FS/RAP provides for the
24 performance of long-term ground water monitoring at the Site, concurrent with and subsequent
25 to the removal of soils and the placement of oxygen-releasing compounds into the ground
26 water beneath the Site.

27 The proposed Consent Decree adequately compensates the public. Pursuant to
28 the Consent Decree, DTSC will receive \$1,725,000. DTSC, moreover, will be spared the

1 expense of litigating defendants' liability for the costs DTSC has incurred and will incur in the
2 future in connection with the Site. Further, the Consent Decree protects the public by
3 explicitly allowing DTSC to recover further costs from defendants in the event that DTSC
4 learns of previously unknown conditions at the Site, or learns new information about the Site
5 not previously available to it, that demonstrates that the environmental response activities
6 conducted at and for the Site are inadequate.

7
8 D. The Consent Decree Is Consistent With The Purposes That CERCLA Is
9 Intended To Serve.

10 An overriding purpose of CERCLA is to ensure site cleanup. *See Waste Mgmt.*
11 *of Alameda County v. East Bay Regional Park Dist.*, 135 F. Supp. 2d 1071, 1088 (N.D. Cal.
12 2001). The Consent Decree assures that clean-up will occur at the Site. Moreover, one of the
13 chief purposes of CERCLA is to allow government agencies to recover their environmental
14 response costs rapidly, so that the sums recovered can be used either at the same site or at
15 other sites. *See, e.g.*, 42 U.S.C. § 9613(f)(2) (providing contribution protection to parties
16 settling with a government agency in an administrative or judicially approved settlement,
17 thereby encouraging the settlement of CERCLA claims); 42 U.S.C. § 9613(g)(2) (requiring a
18 court holding a defendant liable under CERCLA for a government agency's past
19 environmental response costs to enter a declaratory judgment against the defendant, and in
20 favor of the government agency, on liability for future environmental response costs, thereby
21 speeding the recovery of future response costs); 42 U.S.C. § 9622(g) (requiring the United
22 States Environmental Protection Agency to conclude *de minimis* settlement agreements
23 whenever practicable and in the public interest); and 42 U.S.C. § 9622(h)(1) (allowing federal
24 agency heads to settle CERCLA claims at smaller sites without United States Department of
25 Justice approval).

26 The Consent Decree affords DTSC rapid and certain recovery of a substantial
27 sum of money from defendants that it can put to use at the Site, or at other sites at which it is
28 conducting cleanup activities. Absent the Consent Decree, DTSC would be put to the

1 expense, delay and risk inherent in litigating defendants' underlying liability. At the end of
2 that process, DTSC might well recover nothing for its efforts, or might recover less money
3 than it will recover pursuant to the Consent Decree. The Consent Decree thus clearly furthers
4 one of the key purposes of CERCLA — to ensure the rapid and certain recovery of response
5 costs by government agencies.
6

7 V. CONCLUSION
8

9 For the foregoing reasons, defendants respectfully request that this Court
10 approve and enter the Consent Decree.
11

12 DATED: May 31, 2001

By


JOSEPH J. ARMAO

Attorneys for Non-Federal Defendants
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